

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA CASEY CARTER,

Plaintiff,

No. CIV S-08-0125 JAM EFB P

vs.

ROBERT SILLEN, et al.,

Defendants.

ORDER AND
FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in pro per and apparently attempting to file a civil rights action under 42 U.S.C. § 1983. He has not yet filed a complaint but on January 17, 2008, he filed a motion for a preliminary injunction.

Plaintiff seeks an injunction ordering prison officials not to transfer him from High Desert State Prison because of issues relating to his ongoing medical care. Since filing his motion, however, plaintiff was transferred to Kern Valley State Prison. Additionally, California Department of Corrections and Rehabilitation records indicate that plaintiff has since been released from custody. Accordingly, plaintiff is no longer subject to the conditions complained of in his January 17, 2008 filing.

When an inmate seeks injunctive or declaratory relief concerning the prison where he is incarcerated, his claims for such relief become moot when he is no longer subjected to those

1 conditions. *See Preiser v. Newkirk*, 422 U.S. 395, 402-03 (1975); *Nelson v. Heiss*, 271 F.3d 891,
2 897 (9th Cir. 2001); *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991). Accordingly,
3 plaintiff's request should be denied as moot.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. If plaintiff would like to proceed with his claims in a civil rights action, plaintiff shall,
6 within thirty days of the date of service of this order, file a complaint and either prepay the filing fee
7 or request leave to proceed *in forma pauperis*. The complaint must bear the docket number assigned
8 this case. Plaintiff must file an original and two copies of the complaint.

9 2. The Clerk of Court is directed to send plaintiff a copy of the complaint form and in forma
10 pauperis application used in this court.

11 For the foregoing reasons, IT IS HEREBY RECOMMENDED that plaintiff's motion for a
12 preliminary injunction be denied as moot.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty days after
15 being served with these findings and recommendations, any party may file written objections with
16 the court and serve a copy on all parties. Such a document should be captioned "Objections to
17 Magistrate Judge's Findings and Recommendations." Failure to file objections within the specified
18 time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455
19 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: October 10, 2008.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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